

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

KINNIE MA IRA; JEFFERY S. GRAMM IRA; STACY GREASOR IRA; VICTOR WADE IRA; KAZUE BELL; DEAN CROOKS; CORRI RENE EDEN; CATHERINE KOMINOS; KAREN LOCH; ROBERT A. STONE LIVING TRUST; SHIRLEY STONE LIVING TRUST; THE STANLEY S. AND MILLICENT R. BARASCH LIVING TRUST; AND LORETTA DEHAY,

Plaintiffs,

-v-

ASCENDANT CAPITAL, LLC, *et al.*,

Defendants.

Case No. 19 Civ. 1050-LY

**PLAINTIFFS' MOTION FOR ENTRY OF PROPOSED CONFIDENTIALITY
AND PROTECTIVE ORDER**

Plaintiffs have served Rule 34 document requests on numerous Defendants in this consolidated action. Almost all of these Defendants have required the entry of a confidentiality and protective order before they will produce responsive documents.¹ Accordingly, in order to facilitate discovery and to provide for the treatment of confidential materials in the above-captioned matters, Plaintiffs² respectfully request that the Court approve and enter the Proposed Confidentiality and Protective Order ("Proposed Protective Order"), attached hereto as Exhibit A.

¹ In addition, many Defendants have refused to produce insurance information with their Initial Disclosures without the entry of a confidentiality and protective order.

² "Plaintiffs," as used herein includes: Kinnie Ma Individual Retirement Account; Jeffery S. Gramm Individual Retirement Account; Stacy Greasor Individual Retirement Account; Victor Wade Individual Retirement Account; Kazue M. Bell; Dean Crooks; Corn Rene Eden; Catherine Kominos; Karen Loch; Robert A. Stone Living Trust, dated January 9, 1992, as amended May 24, 2005; Shirley Stone Living Trust, dated January 9, 1992, as amended May 24, 2005; the Stanley S. and Millicent R. Barasch Living Trust; and Loretta DeHay.

The Proposed Protective Order is the product of extensive negotiation over many weeks with various Defendants and ***has the support of 56 Defendants***. See, *infra* at 3, for a list of Defendants who have agreed to the terms of the Proposed Protective Order and support its entry by the Court (the “Supporting Defendants”). ***None of the Defendants has provided Plaintiffs’ counsel with any opposition to the Proposed Protective Order.***

While the Proposed Protective Order is based on the template Confidentiality and Protective Order available on the Court’s website as Appendix H-1, it is also the product of many weeks of negotiation among Plaintiffs and several of the Defendants in the captioned Action. As a result, these parties have, among other changes, expanded the list of Qualified Persons, added a declaration of compliance for certain Qualified Persons to sign (Exhibit 1 to the Proposed Protective Order), and modified the provisions for the disposition of confidential documents at the end of this Action and treatment of potential waivers of privilege or other protections from discovery. At the request of Defendants Schneider and Gentile, who are the subject of a criminal proceeding in the United States District Court for the Eastern District of New York, *United States v. Gentile, et al.*, No. 1:21-cr-00054(DG)(PK) (E.D.N.Y.) (the “Criminal Action”), and after further negotiation with counsel for Defendants Schneider, Ascendant Capital, Gentile, certain of the Auditor Defendants and Plaintiffs, the Proposed Protective Order also provides that Defendants Gentile and Schneider may use confidential documents produced in this Action in the Criminal Action (subject to providing parties that have produced documents in this Action with reasonably prompt notice of the disclosure of, or challenges to the designation of, those documents in the Criminal Action, as further specified in the Proposed Protective Order). See Exhibit A, Paragraph 4.

The Supporting Defendants include the 56 Defendants listed below,³ which have indicated their agreement with the Proposed Protective Order and support its entry:

Aegis Capital Corp.	HighTower Advisors, LLC
Aeon Capital, Inc.	HighTower Securities, LLC
American Capital Partners, LLC	IBN Financial Services, Inc.
Arkadios Capital Partners LLC	Innovation Partners, LLC
Ascendant Alternative Strategies, LLC	Jeffrey Schneider
Ascendant Capital, LLC	Kingsbury Capital, Inc.
Ausdal Financial Partners, Inc.	Landolt Securities, Inc.
BCG Securities, Inc	Lewis Financial Group n/k/a DAI Securities, LLC
Cabot Lodge Securities LLC	Lion Street Financial, LLC
Capital Investment Group, Inc.	Margolin Winer & Evens LLP
Cascade Financial Management, Inc.	Moloney Securities Co. Inc
Center Street Securities, Inc.	Newbridge Securities Corporation
CohnReznick LLP	Orchard Securities, LLC
Colorado Financial Service Corporation	Purshe Kaplan Sterling Investments, Inc.
Concorde Investment Services, LLC	Royal Alliance Associates, Inc.
Crowe Horwath LLP	RSM US LLP
Crown Capital Securities LP	SagePoint Financial Inc.
David A. Noyes & Co. (now known as Sanctuary Wealth Group, LLC)	Scott Naugle
David Gentile	Steven Frangioni
Dempsey Lord Smith, LLC	Triad Advisors, LLC
Detalus Securities, Inc.	Uhlmann Price Securities, LLC
DFPG Investments, Inc.	Vestech Securities, Inc.
DJ Partners LLC	Western International Securities
EisnerAmper LLP	WestPark Capital
FSC Securities Corporation	Whitehall-Parker Securities, Inc.
Geneos Wealth Management, Inc.	Withum Smith+ Brown, PC
Dotty J. Bollinger	Woodbury Financial Services, Inc.

³ A number of the Supporting Defendants approved the penultimate version of the Proposed Protective Order. The only change made thereafter is that the final version of the Proposed Protective Order (Exhibit A) includes revised language in Paragraph 4, which provides *additional protection* to a producing party, in the form of reasonably prompt notice, if their documents are used in the Criminal Action (as explained, *supra*, at 2). Plaintiffs' counsel expressly advised all such Defendants on more than one occasion that Plaintiffs would represent to the Court those Defendants' agreement with the Proposed Protective Order, Exhibit A, and none of these Defendants voiced any objection.

Mark D. Martino	MR Ranger LLC
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In sum, all 13 Plaintiffs and 56 Defendants (the Supporting Defendants listed above) have consented to the Proposed Protective Order attached hereto as Exhibit A. While the remainder of the Defendants in this Action have not expressed a view regarding the Proposed Protective Order, no Defendants have expressed any opposition to its entry despite numerous inquiries requesting their input.

CONCLUSION

Accordingly, for the reasons set forth above, Plaintiffs respectfully request that the Court enter the Proposed Confidentiality and Protective Order submitted herewith as Exhibit A.

Dated: January 23, 2023

Respectfully submitted,

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Counsel for Barasch Plaintiffs

CERTIFICATE OF CONFERENCE

I do hereby certify that as of January 23, 2023, counsel for Plaintiffs has conferred with the Supporting Defendants, who have consented to the relief requested in this Motion, as explained in the Motion. Plaintiffs' counsel has also made attempts to confer with the remaining Defendants, who have not informed the undersigned of their position on the Motion. None of these Defendants has expressed any opposition to the relief requested in this Motion.

/s/ Peter S. Linden
Peter S. Linden

CERTIFICATE OF SERVICE

I hereby certify that on January 23, 2023, I electronically filed the foregoing, along with Exhibit A, with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

/s/ Jesse Z. Weiss
Jesse Z. Weiss